

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DEVON WALKER,

Plaintiff,

v.

CITY OF BREMERTON, et al,

Defendants.

No. C10-5479RJB

ORDER VACATING DISMISSAL

This matter comes before the Court on Plaintiff's Amended Complaint (Dkt. 10) and on review of the file.

On July 7, 2010, Plaintiff filed a civil rights complaint and an application to proceed *in forma pauperis*. Dkt. 1. On July 13, 2010, the Court issued an order, granting Plaintiff's application to proceed *in forma pauperis* and directing him to file an amended complaint, curing the deficiencies identified in the court's order, not later than July 28, 2010. Dkt. 2.

On August 5, 2010, Plaintiff filed a motion for extension of time to respond to the Court's July 13, 2010 order. Dkt. 7. On August 11, 2010, the Court granted Plaintiff's motion for extension of time, providing until September 3, 2010 for Plaintiff to file an amended complaint that cures the deficiencies identified in the Court's July 13, 2010 order. Dkt. 8.

1 On September 9, 2010, with no apparent amended complaint received, the Court issued
2 an order dismissing Plaintiff's case without prejudice. Dkt. 9. On September 10, 2010, the
3 Court's clerk filed an amended complaint received from Plaintiff on September 8, 2010. Dkt.
4 10. Although Plaintiff filed his amended complaint after the date afforded to Plaintiff in the
5 Court's July 13, 2010 order, in the interest of fairness the Court should vacate the September 9,
6 2010 order dismissing Plaintiff's case.

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8 In his complaint, Plaintiff, who is proceeding *in forma pauperis* and *pro se* in this matter,
9 requests the appointment of counsel. Dkt. 10. Plaintiff contends that this is a very complex case
10 and that it would be unjust for Plaintiff "to go on without counsel at this time." *Id.*

11 Under 28 U.S.C. § 1915(e)(1), the Court may request an attorney to represent any person
12 unable to afford counsel. Under Section 1915, the Court may appoint counsel in exceptional
13 circumstances. *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984). To find exceptional
14 circumstances, the Court must evaluate the likelihood of success on the merits and the ability of
15 the petitioner to articulate the claims *pro se* in light of the complexity of the legal issues
16 involved. *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983).

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18 In this case, Plaintiff is able to articulate his claims and raise issues before the Court. He
19 requested and was afforded additional time to file an amended complaint, which he did in fact
20 file. *See* Dkts. 7, 8, and 10. Moreover, Plaintiff has not shown that he is likely to succeed on the
21 merits of the case. Plaintiff's motion for appointment of counsel should be denied. If the Court
22 later determines exceptional circumstances exist to warrant appointment of counsel, it shall so
23 order if Plaintiff qualifies.

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25 Therefore, it is hereby **ORDERED** that:

26 (1) The Court's September 9, 2010 Order Dismissing Case (Dkt. 9) is **VACATED**.

1 (2) Plaintiff's request for counsel (Dkt. 10) is **DENIED**.

2 (3) The Clerk is directed to send to Plaintiff via U.S. Mail one United States Marshalls
3 Service "Process Receipt and Return" form for each Defendant named in Plaintiff's
4 amended complaint (Dkt. 10).

5 (4) Plaintiff is directed to complete one United States Marshalls Service "Process Receipt
6 and Return" form, to include the complete name and mailing address of the
7 Defendant, for each Defendant listed in his amended complaint. If Plaintiff does not
8 properly complete and return to the Court Clerk one United States Marshalls Service
9 "Process Receipt and Return" form and one copy of his amended complaint for each
10 Defendant named in Plaintiff's amended complaint (Dkt. 10) by no later than October
11 10, 2010, the Court may dismiss the case.
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13 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
14 to any party appearing *pro se* at said party's last known address.
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16 DATED this 10th day of September, 2010.

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19 ROBERT J. BRYAN
20 United States District Judge
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